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~~No. 99-0031~~

IN THE
SUPREME COURT OF THE UNITED STATES

THE CHEVY CHASE LAND COMPANY OF MONTGOMERY COUNTY, MARYLAND
Petitioner

v.

UNITED STATES OF AMERICA, MONTGOMERY COUNTY, MARYLAND, AND COLUMBIA COUNTRY CLUB
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where a federal court must apply state law to determine property rights, and certifies the issues before it to the state court for determination, must the federal court then adhere to the decision of the state court?

2. Where a federal court determines that, under state law, an easement was not abandoned and includes within its scope the current and planned uses of it, can any claim for a taking of a "reversionary" interest exist?

LIST OF PARTIES

The Petitioner in this proceeding is the Chevy Chase Land Company of Montgomery County, Maryland. Respondents are the United States of America; intervenor-defendant, Montgomery County, Maryland; and intervenor-plaintiff, Columbia Country Club. Briefs also were filed in the Court of Federal Claims and the Maryland Court of Appeals by the Rails-to-Trails Conservancy as an *amicus curiae*.

CORPORATE DISCLOSURE

Montgomery County, Maryland, is a body corporate and politic, organized under the laws of the State of Maryland and the Charter of Montgomery County, Maryland, and as such has no corporate parents or subsidiaries.

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Montgomery County, Maryland, respectfully opposes the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The unpublished opinion of the court of appeals for the Federal Circuit is *Chevy Chase Land Company v. United States*, 1999 U.S. App. LEXIS 32838, and the certification order is reported at 158 F.3d 574 (Fed. Cir. 1998). The opinion of the Court of Appeals of Maryland on the certified questions appears at 355 Md. 110, 733 A.2d 1055 (1999). The decision of the Court of Federal Claims is reported at 37 Fed. Cl. 545 (1997). All of these opinions appear in the appendix to the petition filed by Chevy Chase Land Company.

JURISDICTION

The court of appeals has entered its judgment and denied the subsequent requests for reconsideration. This Court has the discretion to review the court of appeals decision by issuing a writ of certiorari under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The respondent adopts the provisions set forth in the petition for writ of certiorari and further states that 16 U.S.C. §1247(d) applies in its entirety.

STATEMENT OF THE CASE

The relevant facts in this case span over a century. In 1891, as part of the Chevy Chase Land Company of Montgomery County's (Land Company) efforts to develop and suburbanize Chevy Chase, Maryland, the Land Company, in exchange for certain commitments from the Metropolitan Southern Railroad (MSRR), agreed to convey to MSRR the right of way at issue in this case. Some years later, on March 22, 1911, the Land Company granted to MSRR (the County's predecessor in title) and its successors and assigns a "free and perpetual right of way." Contrary to the Land Company's assertion, the deed did not restrict MSRR's use of the "free and perpetual right of way" in any manner. The complete lack of restrictions differentiates the deed in this case from other contemporaneous deeds, easements, and interests created by the Land Company in which it created both use restrictions and reversionary language. This lack of restrictions also differentiates the deed from other deeds considered by the Maryland Court of Appeals.

The right of way conveyed extends between Bethesda and Chevy Chase and consists of an approximately one-mile segment of what was known as the Georgetown Branch built in the last decade of the nineteenth century from Silver Spring, Maryland, to Washington, D.C. The original line had three stops in Montgomery County—Silver Spring, Chevy Chase Lake, and Bethesda. The B&O Railroad[1] hoped to have this line of railroad provide commuter service, but this hope was not

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[1]While MSRR owned the right of way, the B&O was its operational arm. Collectively in this brief, the term "Railroads" refers to both.

realized, although during the Korean War troops were carried over the Georgetown Branch. For nearly a century, until at least May 1985, trains operated along this right of way. On April 19, 1986, following a severe storm that damaged the Rock Creek trestle in the right of way so extensively that it became too expensive to repair, the Railroads decided to ask the Interstate Commerce Commission (ICC) to "abandon and discontinue service" along this line.

Prior to the Railroads seeking to discontinue their common-carrier obligations, the County continuously and diligently pursued use of the right of way for mass-transit purposes to construct a lightrail facility. Likewise, before the Railroads sought to discontinue or abandon their regulated common-carrier obligations, they contemplated, intended, and pursued disposition of the right of way to the County. In fact, at a management committee meeting in December 1985, the Railroads decided to negotiate with the County for transfer of the right of way for use as a transitway and bike path. Thereafter, on July 11, 1986, the County formally and officially advised the ICC in a verified statement that the County intended to acquire the right of way to provide lightrail, transportation, and recreational uses. The ICC referred to the lightrail in its draft and final environmental impact statement, as well as in its decision dated February 25, 1988 (served on March 28, 1988), in which the ICC declared that the use of the right of way for lightrail service would be consistent with 16 U.S.C. § 1247(d) and rail banking.

Like the Railroads' operation, the lightrail will connect Silver Spring, Chevy Chase (near what used to be Chevy Chase Lake), and Bethesda. The Silver Spring and Bethesda termini will connect at Metro Rail Stations. The project provides an

energy-efficient mode of mass transportation and forms a major component of the County's efforts to meet and exceed the requirements and objectives of the Clean Air Act Amendments of 1990. The County's proposal also includes a bikeway for commuter use, and a hiker trail, both of which are intended to get people out of their cars and to provide a bicycle route connecting two Central Business Districts, namely, Silver Spring and Bethesda. Further effecting its plan, the County Council adopted another amendment in November 1989 that expressly designated the right of way for lightrail use and addressed the layout and design of the lightrail in greater detail.

The County's unwavering interest in acquiring the right of way for lightrail service and the Railroads' intention to sell the right of way to the County culminated in the execution of a contract of sale between the County and the Railroads. The contract of sale contained several key terms, among which the County agreed to purchase approximately 6.4 miles of the right of way, including "all of Seller's right, title, and interest and appurtenances thereto (including all tracks, switches, crossing protection devices, crossings, bridges, trestles, culverts, buildings, signals, communication lines and poles that are affixed as of the date of this Contract to the land between the above-described points)."[2] The planning, financing, and

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[2]While the County pursued acquisition of the right of way, on April 7, 1988, another entity, Laurel Sand & Gravel, Inc. (LS&G), also expressed interest in acquiring the right of way and entered the ICC proceedings with an Offer of Financial Assistance, pursuant to 49 U.S.C. § 10905, to purchase the right of way for common-carrier service. LS&G proposed to acquire the line to serve three of its customers in

construction of major transportation facilities takes many years to complete and the County's commitment to implementing lightrail service within this right of way has been affirmed, pursued, and advanced from the outset.

On December 14, 1988, the ICC issued a Certificate of Interim Trail Use (CITU) under 16 U.S.C. § 1247(d) to permit the County to acquire the Georgetown Branch right of way for lightrail use with an accompanying hiker/biker path alongside. The Land Company filed a complaint against the United States on April 8, 1992, claiming that it owned the right of way at issue and challenging the issuance of the CITU as a taking of property without just compensation in violation of the Fifth Amendment to the United States Constitution. The Columbia Country Club (Club), which has not sought a writ of certiorari, moved to intervene as a plaintiff claiming ownership of portions of the right of way prescriptively or through a "lost deed". The County requested permission to intervene as a defendant to protect its interest in the right of way and its obligations under the CITU and 16 U.S.C. § 1247(d). The Court of Federal Claims (claims court) granted both motions.

The claims court heard cross-motions for summary judgment and issued an opinion, which held that the original

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Montgomery County, and to serve any of the line's former customers, as well as to provide nighttime freight service as needed. LS&G also was willing to cooperate with the County to provide commuter rail and with another entity to provide excursion services. On April 14, 1988, the ICC found that LS&G was financially responsible and that its § 10905 offer was *bona fide*.

conveyance of the right of way to the MSRR, its successors and assigns, transferred a fee simple interest. The court further determined that adverse possession had not been established by the Club and that the "lost deed" theory was inapplicable. As a result, no taking of the Land Company's property or the Club's property occurred, and the court did not need to reach the issue of abandonment. *Chevy Chase Land Company v. United States*, 37 Fed. Cl. 545 (1997). In *dictum*, the claims court equated abandonment of common-carrier obligations under the federal regulatory scheme with state law property abandonment and stated that, if the County acquired only an easement, the right of way would have been abandoned no later than February 25, 1988, the date on which the ICC served its decision that, upon conclusion of the ICC process, abandonment of common-carrier service would be allowed. *Id.* at 580. Based upon its finding that the original deed conveyed to MSRR an estate in fee simple, the court entered judgment in favor of the United States and Montgomery County. *Id.* at 599.

Both the Land Company and the Club noted appeals to the United States Court of Appeals for the Federal Circuit. After briefing and oral argument, the Federal Circuit certified the three state law questions to the Maryland Court of Appeals pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 12-601 to 12-606 (1998 Repl. Vol.). These threshold questions were the same as those identified in *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed. Cir. 1996), and would determine whether the Land Company had a cognizable takings claim. The court transmitted the certified questions along with the parties' Joint Statement of Facts. Following briefing and oral argument by the parties, the Maryland Court of Appeals filed comprehensive answers to the certified state law questions, summarized as follows:

Question 1: Under Maryland law, did the 1911 deed convey fee simple absolute interest to the Railroads, or instead, did the deed convey an easement to the Railroads?

Answer 1: The 1911 deed conveyed an easement.

Question 2: If the 1911 deed conveyed an easement to the Railroads, as a matter of law, is that easement subject to any limitations?

Answer 2: The easement conveyed was not subject to limitations and the hiker/biker and proposed transit use of the right of way are all within the legally anticipated scope of the easement. Railroad easements are public highways held in trust for public use.

Question 3: If the deed conveyed an easement to the Railroads, has that easement, as a matter of law, been abandoned at any time since its conveyance, and if so, when?

Answer 3: The easement has not been abandoned and the Railroad's actions in conformance with federal law cannot supply the decisive and unequivocal act necessary under Maryland law to prove that the Railroad has abandoned its state property interest.

See Chevy Chase Land Company v. United States, 355 Md. 110, 117-119, 733 A.2d 1055, 1059 (1999). The parties filed supplemental briefs as requested by the United States Court of Appeals and the federal court entered judgment in favor of the United States and the County holding that the interest held was an easement that had not been abandoned. The Federal Circuit also held that the uses contemplated by the County are within the scope of the easement. Both the Land Company and the Club petitioned for rehearing *en banc*, which was denied. The federal court acted consistently with the state court and concluded that no takings claim accrued.

REASONS FOR DENYING THE PETITION

This Court should not hear this case because the Petitioner has presented no compelling reason for review. The unpublished decision of the Court of Appeals for the Federal Circuit does not involve an important federal question, does not conflict with another circuit, and does not conflict with a state court of last resort. In fact, the Federal Circuit adhered to the direction of this Court in *Preseault v. ICC*, 494 U.S. 1 (1990), and adopted the decision of the state court of last resort on matters involving state property law. Moreover, the challenges asserted involve solely the application and interpretation of state law that has no bearing on other jurisdictions.

The federal court properly applied the applicable state law, and the state court adhered to over 100 years of Maryland property law. The case does not present a takings issue or any other federal matter for this Court to review.

THE COURT OF APPEALS PROPERLY RELIED UPON THE STATE COURT INTERPRETATION OF MARYLAND LAW.

The court of appeals entered judgment in favor of the United States and Montgomery County. It is well settled that property rights are not created by the Constitution, but are defined by existing rules or understandings under state law. *Ruckelshaus v. Monsanto*, 467 U.S. 986, 1001 (1984); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980). Likewise, "reversionary" interests are governed by state law. *Preseault*, 494 U.S. at 8.

The petition before this Court seeks to frame the question as a takings issue, alleging that new background principles of state law redefine and limit the Land Company's property interest, but there simply are no new principles or enunciations of law here. The legal framework in existence at the time the deed was granted is much the same as it is today, and Petitioner has suffered no deprivation of a property interest. Rather, the "background principles" amply support the decision of the court of appeals and derive solely from state law, which the federal court adhered to in reaching its conclusion. That Petitioner does not like the result does not create an appropriate issue for this Court to review.

The Federal Circuit did not violate background principles of takings analysis, but adhered to established principles of Maryland law.

Although Petitioner complains that the court of appeals relied upon a state court decision that created a new rule of state law, the state court's decision is consistent with the applicable

Maryland cases and, therefore, there is no support for Petitioner's claim.

This Court already has recognized that, "under any view of takings law, only some rail-to-trail conversions will amount to takings." *Preseault v. ICC*, 494 U.S. at 16. Some rights of way are held in fee simple, some are easements, and some are easements "that do not as a matter of state law revert upon interim use as nature trails." *Id.* The "background principles of law" in Maryland support the conclusion that, as a matter of state law, the right of way at issue here does not revert.

For 140 years, the Maryland legislature has permitted railroads to "regulate, modify or change the control, use and estate of any railroad constructed by" it as it may deem to be in the interest of the corporation and "necessary to the accommodation of the public travel or use of the said rail road or rail roads." *Chevy Chase Land Company v. United States,* 355 Md. at 147, 733 A.2d at 1074 (quoting Md. Code, Corporations Art., §71 (1860)). Further, a litany of cases from 1871 forward have held that changes in modes of transportation and passage on a right of way *do not* change its character as a right of way, but are deemed to be within the legal contemplation of the parties at the time of the granting or conveying of the easement. None of this is new law.

Interpretation of the 1911 deed provides the backdrop for determining what interest was created under principles of state property law, whether the current and intended uses of the right of way created by the 1911 deed are within the scope of the easement, and whether the easement has been abandoned, or but for the Certificate of Interim Trail Use issued by the ICC

pursuant to authority of 16 U.S.C. § 1247(d), would have been abandoned.

In addressing this issue, the Maryland Court of Appeals determined that the right of way bestowed upon MSRR was an easement. Based on the express language of the grant of the right of way, and after carefully considering Maryland statutes from 1860, 1880, and 1882, along with case law from the turn of the twentieth century, the time contemporaneous with the grant, the court concluded that the County's current and intended uses of the right of way were within the legal contemplation of the parties and are within the scope of the easement as granted. The Maryland Court of Appeals explicitly acknowledged that it needed to look at the governing law at the time of the conveyance. 355 Md. at 123, 733 A.2d at 1062.

The Land Company, however, entirely ignores the law as it existed in 1911. The Maryland court painstakingly analyzed the ample case law contemporaneous with the original deed and noted, "[w]e have long considered a railroad line as analogous to a public highway." 110 Md. at 147, 733 A.2d at 1075. The court further explained that "[a] railroad is in many essential respects a public highway, and the rules of law applicable to one are generally applicable to the other." 110 Md. at 147, 733 A.2d at 1075 (quoting *Whalen v. Balto. & Ohio R. Co.*, 108 Md. 11, 21, 69 A. 390, 393 (1908)). Thus, at least as early as 1908, three years *prior* to the grant of the right of way, it was well established that a railroad is a public highway and the rules of law applicable to highways apply to rights of way. The Land Company knew that when it made the grant in 1911. It also knew this legal principle when it signed the 1891 agreement as part of its effort to develop Chevy Chase, Maryland, into the thriving suburb that it has become. The right of way was given

for the convenience of the community and it continues to serve that very same community.

The Maryland court then discussed a series of cases ranging from 1871 through 1907 in which it held that easements for public highways include within their scope changing means of transportation. *Water Co. v. Dubreuil*, 105 Md. 424, 66 A. 439 (1907); *Peddicord v. B., C. & E. M.R.R. Co.*, 34 Md. 463, 480-481 (1871) (right of way for turnpike could be used for a horse railway for passengers even though it was not actually contemplated by any of the parties to the acquisition and grant; the change in instrumentality was consistent with its character and purpose as a public highway); *Hodges v. Balto. Union P. Ry. Co.*, 58 Md. 603, 619 (1882) (street could be used for horse railway); *Koch v. North Ave. R.R. Co.*, 75 Md. 222, 229-230, 23 A. 463, 465 (1892); *Green v. City & Suburban R.R. Co.*, 78 Md. 294, 307, 28 A. 626, 629-630 (1894) (extended holdings to electric railways). The statutory law was entirely consistent with this line of cases. Md. Code, Corporations Art., § 71 (1860).

The Land Company's reliance upon *Sapp v. North Central Ry. Co.*, 51 Md. 115 (1879), is misplaced and does not show any error by the state court. The Maryland Court of Appeals was aware of its earlier opinion and did not find the case to be relevant. *Sapp* does not affect this case, because it dealt with the ability of a railroad corporation to grant a *private* footway. As the *Sapp* court pointed out in its discussion, the company could not have rightfully granted away to private individuals the use that was for the benefit of the public. In the present case, the right of way is not subject to a new private use but continues to be used by the public as originally intended.

Moreover, the Maryland Court of Appeals employed longstanding, unremarkable principles of instrument construction to conclude that the easement created by the 1911 deed did not contain the restrictions now proposed by the Land Company nearly 100 years later. The Court examined the language of the deed itself to determine its scope. 355 Md. at 143-144, 733 A.2d at 1073. It is neither novel nor extraordinary that the primary consideration in interpreting the scope of the grant is the language of the instrument itself. *See Parker v. T & C Dev. Corp.*, 281 Md. 704, 709, 381 A.2d 679, 682 (1978) (quoting *Buckler v. Davis Sand*, 221 Md. 532, 537, 158 A.2d 319, 322 (1960)); *see also Reid v. Washington Gas Lt. Co.*, 232 Md. 545, 549, 194 A.2d 636, 638 (1963); 4 *Powell on Real Property* § 34.12.2 (1998 Supp.). The Court considered whether the deed imposed any express or implied limitations on the easement and repeatedly pointed out that the deed conveyed a "free and perpetual" right of way and that there were no words of restriction. 355 Md. at 118, 142-143, 733 A.2d at 1073. The very absence of limitations in the 1911 deed sets that instrument apart from many railroad easements considered by the Maryland Court of Appeals in the past. 355 Md. at 144, 733 A.2d at 1073.[3]

The grant in this case is free and perpetual and without limitations of any nature. The Land Company wants this Court to ignore long-established principles of document construction and amend the right of way deed by instilling the limitations the Land Company seeks ninety years after the grant. But the

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[3]As the Maryland Court pointed out, even the 1891 agreement contained no express limitations on how the right of way was to be used. 355 Md. at 144, 733 A.2d at 1073.

courts must look to the scope of the grant and, if there is any doubt, it must be resolved in favor of the grantee. As the 6-1 Maryland majority explained, "if the grant is not clear, the court will interpret the scope of the easement in favor of 'free and untrammeled use of the land.'" *Chevy Chase Land Company*, 355 Md. at 145, 733 A.2d at 1074; *see also Reid v. Washington Gas Lt. Co.*, 232 Md. at 549, 194 A.2d at 638.

The Land Company has ably demonstrated that when it wished to create limitations in its instruments, it readily did so. The fact is, it did not do so in the 1911 deed. As the Maryland Court of Appeals pointed out, this right of way was granted with the backdrop of, at a minimum, longstanding legislation relating to control of railroads and their rights of way. The Court referred to state law authorizing the Maryland legislature to "regulate, modify or change the control, use and estate of any railroad constructed by such corporation, in such manner as it may deem equitable towards the said corporation and *necessary to the accommodation of the public travel or use of the said rail road or rail roads.*" 355 Md. at 147, 733 A.2d at 1074 (quoting Md. Code, Corporations Art., § 71) (emphasis added by the Court). Thus, as long ago as 1860, railroad rights of way were adaptable as necessary to the accommodation of the public travel or use. Without expressly limiting its grant, which it clearly knew how to do, the Land Company had no reasonable expectation, economic or otherwise, that the right of way would be limited to freight use.

Next, the Land Company alleges that the Maryland Court of Appeals "created a new rule of state law that actions consistent with trails use under federal regulations are disqualified as evidence of abandonment." *Land Company Petition at p. 6.* This is not what the state court held. The

Maryland Court of Appeals held that actions taken by the Railroads to comply with federal regulatory requirements cannot supply the unequivocal acts that evidence an intent to abandon an easement in land under Maryland law.[4] *Chevy Chase Land Company*, 355 Md. at 176, 733 A.2d at 1091. The Court considered whether the Land Company, which had the burden of proving abandonment under state law, had offered any other evidence of abandonment. The Court concluded that the Land Company had failed to point to any other evidence sufficient to prove abandonment.

The Maryland Court of Appeals further pointed out that its conclusions must be dictated by existing cases concerning abandonment of an easement by a railroad. 355 Md. at 176-177, 733 A.2d at 1091. The Court closely reviewed *Canton Co. v. Baltimore & Ohio R.R. Co.*, 99 Md. 202, 57 A. 637 (1904), and recognized that, in the *Canton* case, the court affirmed a finding that a railroad right of way had not been abandoned when the circumstances much more strongly supported a finding of abandonment than did the facts presented in this case. 355 Md. at 177-178, 733 A.2d at 1091-1092. The Court considered the record and identified specific facts that did not support a finding of abandonment. Nevertheless, the Land Company continues to quarrel with the Maryland Court's application of a properly stated rule of law pertaining to abandonment to the facts before it.

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[4]As the Maryland court pointed out, Petitioner's theory would lead to the quixotic result that a railroad could effectively *never* dispose of its land without triggering an abandonment, thereby defeating the very thing it intended. 355 Md. at 175-176, 733 A. 2d 1091-1092.

The Maryland Court did not create new law to apply retroactively to the grant of the right of way. Rather, it considered the grant under the law that existed at the time the grant was made. Not only that, but the Court carefully reviewed the stipulated facts submitted by the parties and concluded that the facts presented did not support an intent to abandon the right of way as opposed to the regulated status of the Railroads. The Court pointed out that it has affirmed a finding that a railroad right of way had *not* been abandoned when the circumstances much more strongly supported a finding of abandonment than that presented by the facts in this case. *Chevy Chase Land Company*, 355 Md. at 176-178, 733 A.2d at 1091-1092 (discussing *Canton, supra*). The correct background principles, therefore, were applied by the Maryland court and adopted by the United States Court of Appeals.

The Federal Circuit's decision remains consistent with this Court's decision in Preseault v. United States

The handling and outcome of this case is entirely consistent with the determination of the federal courts in *Preseault.* The Federal Circuit held that the courts first need to look to state law to determine what interest the party claiming the "taking" of a property interest had in the absence of the ICC action. *See Preseault v. United States*, 100 F.3d at 1533 (relying upon *Preseault v. ICC*, 494 U.S. at 20). Even if the right of way in question is only an easement, both the Federal Circuit and this Court recognize that some rights of way that are held as easements "do not even as a matter of state law revert upon interim use as nature trails." *Preseault v. United States*, 100 F.3d at 1532. The easement in this case is exactly such an easement.

The *outcome* of this case and *Preseault v. United States* is different because different facts and different law are present in the case *sub judice*. This case involves an unrestricted granting instrument, a grantor that made the grant in connection with its development of the surrounding area, a purchase of the right of way that took place concurrently with the regulatory abandonment process, an ongoing use of the right of way, and a jurisdiction that has recognized the doctrine of shifting modes of transportation for over a century. *Preseault* clearly established the principle that the grant had to be examined under state law. That is precisely what occurred.

Moreover, federal courts must apply state law to state law questions, as dictated by *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938), and its progeny. *See also* 28 U.S.C. § 1652 (providing that the laws of the states are to be regarded as rules of decision in civil actions in cases where they apply). Federal courts, when interpreting state law, are bound by the interpretation of the law by that state's highest court. *Cherry v. Steiner*, 543 F.Supp. 1270, 1277 (D. Ariz. 1982), *aff'd*, 716 F.2d 687 (9th Cir. 1983), *cert. denied*, 466 U.S. 931 (1984). The Land Company wanted the Federal Circuit to substitute its view of Maryland law for that of the Maryland Court of Appeals to create a cognizable takings claim. That is not appropriate and the panel correctly applied Maryland law as determined by the Maryland Court of Appeals.

CONCLUSION

This Court should deny the Land Company's petition for writ of certiorari. The Land Company inaccurately portrays the opinion of the Maryland Court and asks this Court to substitute its own interpretation for that of the highest court of the state on

matters of state property law and on unremarkable, longstanding principles of document construction and interpretation. In doing so, the Land Company ignores the entire legal backdrop against which it granted its deed to the County's predecessor and asks this Court to replace140 years of Maryland property law with a totally new rendition of property law in the State of Maryland in order to find that a "taking" of private property has occurred. This case simply does not present the requisite constitutional or federal issue that would permit such an intrusion into state law.

For the foregoing reasons, Montgomery County, Maryland, requests that this Court deny the petition for writ of certiorari in this case.

Respectfully submitted,

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